BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| VICTOR DLOUHY,<br><br>Claimant,<br><br>vs.<br><br>GENERAL MILLS,<br><br>Employer,<br><br>and<br><br>OLD REPUBLIC INSURANCE CO.,<br><br>Insurance Carrier,<br>Defendants. | File No. 20700798.01<br><br>ARBITRATION DECISION<br><br>Headnotes: 1402.30, 1803, 2907 |

STATEMENT OF THE CASE

Claimant, Victor Dlouhy, filed a petition in arbitration seeking workers' compensation benefits from General Mills, employer, and Old Republic Insurance Company, insurer, both as defendants. This matter was heard on December 8, 2021, with a final submission date of January 12, 2022.

The record in this case consists of Joint Exhibits 1 through 3, Claimant's Exhibits 1 through 2, Defendants' Exhibits A and D through E, and the testimony of claimant and David Manu.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether the injury of October 7, 2018, is a sequela from a prior work injury.

2. Whether the injury is a cause of permanent disability; and if so,

3. The extent of claimant's entitlement to permanent partial disability benefits.

4. Costs.

## FINDINGS OF FACT

Claimant began working for General Mills in 1991. (Hearing Transcript p. 10) In 2018 claimant worked as a twin screw process operator. Claimant testified there were four different jobs in the twin screw process operator position. Claimant also worked as relief for the four other operators. (TR pp. 10-11)

Claimant's prior medical history is relevant. In August of 2003, claimant was hit in the right knee with a bar going 70 rpm. X-rays taken at the time showed a bone cyst lesion on the knee. Records from that injury indicate the bone cyst was comparable to a 1992 twisting injury to the right knee. (Joint Exhibit 1, pp. 5-6)

On August 2, 2018, while at work, claimant arose from a crawling position when he heard a pop in his left knee. (TR p. 14) Claimant said he continued to work after the August 2, 2018 knee injury. He said that after that date, he wore a knee brace on his left knee. He said he also climbed stairs and ladders differently. (TR pp. 14-16)

On August 24, 2018, claimant was evaluated by Daniel Fabiano, M.D., for left knee pain with a date of injury of August 3, 2018. (JE 2, pp. 8-10) Claimant was assessed on September 20, 2018, as having a derangement of the lateral meniscus in the left knee. (JE 2, pp. 12-13) Claimant eventually underwent arthroscopic surgery for the left knee with Dr. Fabiano. (JE 2, p. 20; Claimant's Exhibit 1, p. 5)

On October 7, 2018, claimant was working while down on his right knee. Claimant said that when he stood up, he felt a pop in his right knee. (TR p. 16; JE 3, p. 35)

Claimant was evaluated by Jeffrey Westpheling, M.D., on October 8, 2018, for right knee pain. Claimant was in a squatting position, favoring his left knee due to a prior injury, when he stood up and felt a pop in his right knee. Claimant was wearing a brace on the left knee at the time of the injury. Claimant was assessed as having a right knee strain. An MRI was recommended. (JE 3, pp. 35-36)

Claimant had an MRI of the right knee on October 18, 2018. It showed degenerative changes without evidence of an acute injury. The MRI also showed a "tiny" Baker's cyst. (JE 3, pp. 39-40)

Claimant returned to Dr. Westpheling on October 19, 2018. The MRI was discussed. Claimant reported some improvement in symptoms. Claimant was being considered for a left knee arthroscopy for a separate injury. Claimant was released from care and returned to work without restrictions. (JE 3, pp. 41-42)

On December 4, 2018, claimant saw Dr. Fabiano for a follow-up of his left knee surgery. At that time claimant had complaints of right knee pain. Claimant was given an injection in the right knee for pain and swelling. (JE 2, pp. 20-21; TR p. 19)

Claimant testified he continued to work at General Mills. He said he used over-the-counter medication to deal with any problems with his right knee. (TR p. 20)

In late July of 2020, claimant and defendants entered into an Agreement for Settlement regarding his left knee injury. In that settlement, claimant received 10.11 weeks of permanent partial disability benefits for a 4.6 percent permanent impairment to the left knee. That settlement was approved by this division on August 5, 2020. (Ex. E)

In an August 24, 2020 report, Farid Manshadi, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Manshadi opined claimant showed evidence of a Baker's cyst on the right with reduced range of motion in the right knee. (Ex. 1, p. 12) He opined claimant had a 10 percent permanent impairment to the right knee based on Table 17-10 of the AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition). (Ex. 1, pp. 12-13)

In a September 12, 2020 letter, Dr. Manshadi opined claimant's right knee condition was a result of his work activity on October 7, 2018. (Ex. 1, p. 15)

On October 5, 2020, in response to a note written by defendants' counsel, Dr. Westpheling indicated claimant had no permanent impairment for his right knee strain on October 7, 2018. (JE 3, p. 61)

Claimant was evaluated by Dr. Westpheling on October 25, 2021. Claimant had continued right knee pain and swelling. (JE 3, p. 69)

In a November 4, 2021 letter, Dr. Westpheling diagnosed claimant's right knee as having degenerative joint disease with a Baker's cyst. He opined claimant's diagnosis was not causally related to his October 7, 2018, date of injury. Dr. Westpheling indicated he reviewed Dr. Manshadi's IME report from August 6, 2020. He opined that any permanent impairment claimant might have was due to his pre-existing Baker's cyst and not of an acute injury on October 7, 2018. (JE 3, p. 71)

In a November 11, 2021, note, Dr. Manshadi indicated that claimant's Baker's cyst more likely than not became symptomatic on or about October 7, 2018, due to overcompensation of the previously injured left knee. (Ex. 1, p. 17)

Claimant testified that, at the time of hearing, he was still employed with General Mills. He testified he moved to a sanitation coordinator job at General Mills in approximately July of 2021. (TR pp, 36, 46; Ex. A) Claimant worked overtime in this job since the alleged date of injury. He said that he is able to perform all job duties. Claimant testified he walks approximately 11,000 steps per day on this job. (TR pp. 36, 39)

David Manu testified he is claimant's current supervisor at General Mills. Mr. Manu testified he interviewed claimant for the sanitation coordinator job at General Mills and, at that time, claimant did not indicate problems with his right knee. (TR pp. 44-46)

Mr. Manu testified that claimant is able to perform all his job duties as a sanitation coordinator. He said claimant spends approximately 70 percent of his current job time on his feet, and the other 30 percent at a desk. (TR pp. 45-47) Mr. Manu testified claimant's job requires him to lift up to 50 pounds and to kneel and climb stairs. (TR pp. 48-49)

## CONCLUSION OF LAW

The first issue to be determined is whether the injury of October 7, 2018, is a sequela to a prior injury.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an

expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012)

The Iowa Supreme Court noted "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Scofield & Welch, 266 N.W. 480, 482 (1936). The Court explained:

> If an employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for."

Id. at 481.

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). A sequela can take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M Co., File No. 788758, (Arb. November 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., 3 Iowa Ind. Comm. Rep. 257, 258 (1982).

In Gumm v. Easter Seals Soc'y of Iowa, Inc., 943 N.W.2d 23 (Iowa 2020), the Iowa Supreme Court noted the difference between a sequela injury and a separate and distinct injury.

> The standard that must be met to establish two separate work-related injuries requires a claimant to demonstrate a distinct and discrete "disability attributable to ... work activities" that occurs after an initial injury. It is not enough for the worker to show disability has been increased by subsequent work activities. These circumstances may serve to increase the disability attributable to the first injury, but do not establish a separate and discrete disability. To establish a separate injury claim, the subsequent condition of the claimant must not be a consequence of the first injury...
>
> For the foregoing reasons, we hold the commissioner and the district court correctly ruled that where a claimant has received disability benefits for a prior compensable injury, the claimant is limited to the review-reopening remedy for additional disability benefits unless she can prove she has suffered another injury. If the subsequent injury is a cumulative injury, it must be a distinct and discrete injury, not merely the aggravation of the prior injury due to regular work activities.

Gumm, 943 N.W. 2d at 33 (citations omitted)

Claimant testified he initially injured his left knee on August 2, 2018. He testified he wore a brace on the left knee. He also testified he climbed stairs and ladders differently after the August of 2018 injury to the left knee.

On October 8, 2018, claimant was evaluated by Dr. Westpheling. Claimant said he hurt his right knee when he was in a squatting position favoring his left knee, when he got up and felt a pop in his right knee. (JE 3, p. 35)

Dr. Manshadi is the expert retained by claimant. In his August 24, 2020, IME report, Dr. Manshadi noted claimant injured his right knee while ". . . favoring his left knee due to his prior injury." (Ex. 1, p. 11)

In his November 11, 2021, supplemental opinion, Dr. Manshadi opined that claimant's right knee injury occurred as a ". . . result of overcompensation for the left knee, which was previously injured." (Ex. 1, p. 17)

The parties settled claimant's left knee injury under an Agreement for Settlement in August of 2020. (Ex. E)

Defendants contend that claimant's right knee injury of October 7, 2018, was a sequela injury to the August 2, 2018 left knee injury. Defendants rely on the causation opinion of Dr. Manshadi, indicating claimant injured his right knee while favoring his left knee. (Ex. 1, p. 11) Defendants contend that because claimant's right knee injury was a sequela to the left knee injury, there is no separate and distinct injury. Defendants argue that because there was no separate and distinct injury, claimant's right knee injury should have been filed under a review-reopening petition and that claimant has no

remedy in a separate petition for the October 7, 2018, date of injury. (Defendants' Post-Hearing Brief, pp. 8-11)

I respect defendants' argument regarding the right knee. However, the record indicates there was a traumatic event for the October 7, 2018, injury. Medical records indicate claimant's right knee injury occurred when claimant heard a popping sound. (JE 3, pp. 35, 38; TR p. 16) Because the record indicates claimant's right knee injury of October 7, 2018, occurred after claimant heard a popping sound, it is found that claimant's right knee injury of October 7, 2018, is a separate injury from the August of 2018 left knee injury.

The next issue to be determined is whether claimant's injury resulted in a permanent disability.

As detailed in the Findings of Fact, claimant was hit by a bar in his right knee in August 2003. X-rays taken at that time showed a Baker's cyst in the knee. Records from that time note that the cyst was comparable to a 1992 record when claimant had a twisting injury in school. (JE 1, pp. 5-6)

Two experts have opined regarding whether claimant's right knee injury of October 7, 2018, resulted in a permanent disability.

Dr. Westpheling treated claimant for an extended period of time. Dr. Westpheling opined that any permanent impairment claimant may have to the right knee is due solely to the pre-existing Baker's cyst in claimant's right knee and not to the injury of October 7, 2018. (JE 3, p. 71)

Dr. Manshadi evaluated claimant once for an IME. In his first opinion, Dr. Manshadi did not address causation of claimant's permanent impairment. He did find that claimant had a permanent impairment due to claimant's decreased range of motion caused by the Baker's cyst. (Ex. 1, p. 13)

After a follow-up letter by claimant's attorney, Dr. Manshadi did opine that claimant's right knee injury was a result of his work activities. (Ex. 1, p. 15)

After a second follow-up letter from claimant's attorney, Dr. Manshadi opined claimant's Baker's cyst became "symptomatic" on October 7, 2018, due to claimant overcompensating for the left knee. (Ex. 1, p. 17)

Dr. Manshadi's opinions regarding permanent impairment are problematic for several reasons. Dr. Manshadi's opinion regarding causation of the permanent impairment claim for the right knee was only given after several reminders from claimant's counsel.

Second, the permanent impairment rating is based upon claimant's decreased range of motion caused only by the Baker's cyst, and not by any traumatic injury. In

short, the permanent impairment rating was given for a condition that claimant has had since 1992.

Third, Dr. Manshadi opined, in his third opinion, that claimant's Baker's cyst became "symptomatic" on October 7, 2018, due to overcompensation for the left knee injury. It is unclear what Dr. Manshadi means by the cyst becoming "symptomatic." Does this mean that the cyst became larger? Does this mean that the cyst moved? How does Dr. Manshadi know the cyst became "symptomatic" without x-rays or other diagnostic testing? Based on the lack of diagnostic testing, it would appear that Dr. Manshadi's opinion is based upon guesswork.

Given these problems with Dr. Manshadi's opinions, his opinion of permanent impairment is found not convincing.

Dr. Westpheling found that claimant had no permanent impairment for the October 7, 2018 injury. He opined that any permanent impairment claimant might have is due to a pre-existing Baker's cyst in claimant's knee that claimant has had for years. Dr. Manshadi's opinion regarding permanent impairment is found not convincing. Given this record, claimant has failed to carry his burden of proof his October 7, 2018, injury resulted in a permanent disability.

As claimant failed to carry his burden of proof that his October 7, 2018, injury resulted in a permanent disability, the issue regarding claimant's entitlement to permanent partial disability benefits is moot.

The final issue to be determined is costs. Costs are assessed at the discretion of the agency. As it is found that claimant failed to carry his burden of proof that his October 7, 2018, injury resulted in a permanent disability, each party shall pay their own costs.

## ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing in the way of permanent partial disability benefits from this matter.

That each party shall pay their own costs.

That defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

Signed and filed this 14th day of February, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

Peter Thill (via WCES)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.